



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** C.W.C. Associates, Inc., and Chianelli  
Contracting Co.  
**File:** B-232764  
**Date:** December 21, 1988

### DIGEST

Where a discrepancy exists between the legal entity shown on the bid and the legal entity shown on the bid bond, and it is not possible to conclude from the bid itself that the intended bidder was the same legal entity as the named principal on the bid bond, the contracting officer properly rejected the bid as nonresponsive since the bid was at best, ambiguous.

### DECISION

C.W.C. Associates, Inc., and Chianelli Contracting Co. d/b/a/ C.W.C. Associates, Inc., a joint venture, protest the rejection of its bid under invitation for bids (IFB) No. N62472-87-B-0473 issued by the Naval Facilities Engineering Command for repairs to barracks at the Naval Construction Battalion Center, Davisville, Rhode Island. The Navy determined that C.W.C.'s bid was nonresponsive because there was a discrepancy between the legal entity shown on the bid and the legal entity shown on the bid bond.

We deny the protest.

The IFB required a bid guarantee in the form of a bid bond or certified check and the solicitation further provided that the failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of a bid.

C.W.C. was the low bidder. In the bid form, the name of the bidder was identified as C.W.C. Associates, Inc., and the form was signed by Albert Chianelli, President. Also, in the representations and certifications under "Type of Business Organization," C.W.C. completed the section as follows:

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"The bidder, by checking the applicable box, represents that-

(a) It operates as X a corporation incorporated under the laws of the State of NY,        an individual,        a partnership,        a nonprofit organization, or X a joint venture."

The bid bond identified its principal as C.W.C. Associates, Inc., and Chianelli Contracting Co. d/b/a/ C.W.C. Associates Inc., a joint venture. In the signature block for the principal, block 1, appeared C.W.C. Associates, Inc., with the signature of Albert Chianelli, President, in block 2, Chianelli Contracting Co., with the signature of Robert Chianelli, partner. In the space entitled "Type of Organization," appearing in the upper right hand corner of the bid bond, the word "joint venture" was checked.

By letter dated September 19, 1988, the contracting officer notified C.W.C. that its bid was being rejected as nonresponsive because of the discrepancy between the bidder and the principal shown on the bid bond.

Bid bond requirements are a material part of the IFB that a contracting officer cannot waive. See Atlas Contractors, Inc./Norman T. Hardee, a Joint Venture, B-208332, Jan. 19, 1983, 83-1 CPD ¶ 69. Thus, a bid bond which names a principal different from the nominal bidder is deficient and the defect may not be waived as a minor informality. A.D. Roe Co., Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD ¶ 194. This rule is prompted by the rule of suretyship that no one incurs a liability to pay the debts of another unless he expressly agrees to be bound. See Hoyer Construction Co./K.D. Hoyer, a Joint Venture, B-183096, Mar. 18, 1975, 75-1 CPD ¶ 163. Moreover, a surety under a bond in the name of more than one principal is not liable for the default of one of them. For this reason, we rigidly apply the rule that the principal listed on the bid bond must be the same as the nominal bidder. Opine Construction, B-218627, June 5, 1985, 85-1 CPD ¶ 645.

C.W.C. contends that its bid is responsive because the entity listed on the bid is the same entity listed on the bid bond and, therefore, the government's interest is protected. The protester argues that both the bid and the bid bond identify the bidder and principal as C.W.C. Associates, Inc., and that both indicate that C.W.C. is a joint venture. C.W.C. also argues that the surety would be bound under the bid bond whether C.W.C. Associates, Inc., individually, or C.W.C. Associates, Inc., the joint venture, is considered to be the bidder because under state law the

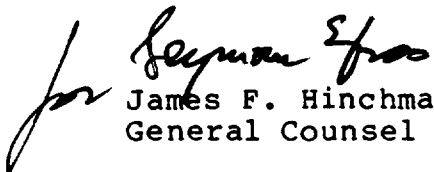
surety is bound unless the departure from the suretyship contract is shown to be a "material variance," and C.W.C. contends that no such variance exists here.

In our opinion, C.W.C.'s arguments are without merit. As stated above, our cases adhere to the holdings that a bid bond which names a principal different from the nominal bidder is a material defect which cannot be waived. Thus, the issue remains whether the legal entity listed on the bid is the same as the legal entity listed on the bid bond.

The entity on the bid is identified as C.W.C. Associates, Inc., a corporation or a joint venture, while the entity on the bid bond is a joint venture doing business under the name of C.W.C. Associates, Inc. It cannot be conclusively determined from the bid without resort to post bid opening explanations whether the C.W.C. Associates, Inc., named on the bid is the individual corporation or the joint venture. While the names may be the same, the possibility exists that the legal entities are different. While the protester contends that it bid as a joint venture, the bid is at best ambiguous and therefore was properly rejected. See Future Electric Co., B-212938, Feb. 22, 1984, 84-1 CPD ¶ 216; Atlas Contractors, Inc./Norman T. Hardee, a Joint Venture, B-208332, supra.

With regard to C.W.C.'s allegations concerning earlier procurements in which the Navy accepted substantially similar bidding documents, we cannot consider them. Each procurement action is a separate transaction, and the action taken under one is not relevant to the propriety of the action taken under another for purposes of a bid protest. Ferrite Engineering Labs, B-222972, July 28, 1986, 86-2 CPD ¶ 122.

The protest is denied.

  
James F. Hinchman  
General Counsel